

Task Force to Study Maryland's Criminal Gang Statutes Meeting Minutes

100 West Patrick Street
Frederick, Maryland 21701
Tuesday, November 5, 2019, 9:30 a.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Jesse Pippy, Maryland House of Delegates; Delegate Wanika Fisher, Maryland House of Delegates; Bill Sage, Department of Public Safety and Correctional Services (DPSCS); Mary Siegfried, Esq., Office of the Public Defender; Toni Holness, American Civil Liberties Union; Robin Brady-Slifer, Department of Juvenile Services; James Trusty, Esq., Ifrah Law PLLC; Lt. Colonel David Ruel, Maryland State Police; Carl J. Kotowski, Governor's Office of Crime Control and Prevention (GOCCP); Katherine Dorian, Esq., Maryland Office of the Attorney General; and Judge William Tucker; Circuit Court of Howard County, Captain Michael Moore, Department of Juvenile Services.

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Michael Yeagy, Maryland Retailers Association; Scott Shellenberger, Baltimore County State's Attorney's Office; Holly Wilcoc, PhD, Johns Hopkins University, and Chief Henry P. Stawinski III, Prince George's County Police Department, Nicole Hanson, Executive Director, Out for Justice; Anthony McNeil, Farming4Hunger..

Other Guests in Attendance: Cara Sullivan, Governor Hogan's Legislative Office; Anthony Baranauskas, GOCCP; Steven Clark, Legislative Aide for Senator Hough; Luke Pinton, Chief of Staff for Senator Will Smith.

Welcome by Senator Michael Hough

Senator Hough called the meeting to order at 9:30 a.m. as he welcomed everyone to the fifth *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting. He thanked the members for traveling to his home county in Frederick for this meeting. Additionally, he thanked the Frederick Police for allowing the Task Force to use their facilities. Senator Hough mentioned that the final meeting will occur in December in Annapolis, and this meeting will "wrap-up" the Task Force's recommendations and findings in preparation for the 2020 Legislative Session. Senator Hough then asked the members to send proposals of recommendations to him within 10 days of the final December meeting.



Introductions of Gang Task Force Members

Senator Hough invited members and guests to introduce themselves.

Approval of Meeting Minutes

Senator Hough mentioned the draft minutes from the September meeting and asked if any changes were needed. Delegate Pippy made a motion to approve the minutes, which was seconded by various members of the Task Force. Minutes were then approved.

Presentations

Use of Current Gang Statutes in Prosecution in Frederick County

Senator Hough invited Frederick County State's Attorneys, Charlie Smith, Amanda Leatherman, and Rebecca Clinton to present on the use of the current gang statutes in Frederick. Mr. Baker said that Frederick faces a unique problem in Maryland because it borders three states (Pennsylvania, Virginia, and West Virginia). Gang activity is not limited to just one jurisdiction, and it can be challenging to follow the activity.

Mr. Smith proceeded to explain the difficulty of using the current statutes. In order to be convicted for a violation of §9A-804, one must (1) be involved in a group or association of three or more individuals whose members, (2) individually or collectively engage in a pattern of criminal gang activity (two or more underlying crimes provided in the statute), and (3) have in common an overt or covert organizational or command structure knowing the member of the gang engages in a pattern of criminal gang activity. Mr. Baker said that in his opinion, the current gang statutes, "have no teeth, and were only enacted to relieve public pressure when Doug Gansler was Maryland Attorney General." Mr. Baker then introduced Amanda Leatherman, who is the lead prosecutor in Frederick County pursuing gang crimes.

Ms. Leatherman mentioned that while Frederick is not a large jurisdiction, the county has a high influx of MS-13 and Pagan related gang activity. MS-13 in particular is recruiting gang members in schools at a young age, some as young as 12. Additionally, she said waiting until high school to educate the students on the dangers of joining a gang is too late to reach them. Ms.

Leatherman proceeded to explain how the current statutes are not as forceful as they need to be. Prosecutors have too many elements to prove beyond a reasonable doubt not only for the underlying crime, but to convince juries that the crime was gang related. Ms. Leatherman said that there are almost 10 factors that she and other prosecutors need to meet in order to prove the crime was gang related. Previously, Frederick County was able to rely on an expert witness who would testify as a material witness in favor of the State. This expert has since retired, and Ms. Leatherman suggested that it might be necessary for the State to create a list of expert witnesses who can be used while prosecuting gang crimes.



Ms. Leatherman then introduced Rebecca Clinton who oversees the prosecution of violent crime in Frederick. Ms. Clinton said that is difficult to use the current statutes connecting firearm offenses with gang activity. An ideal situation would be where the state could use the firearm offense along with circumstantial evidence of gang membership to prove that the crime was connected to gang violence.

Mr. Smith reiterated that the focus of the workgroup should be to focus on how to take down the leadership and top members of the gang, rather than simply prosecuting the low level members who are easily replaced. Senator Hough stated that the Governor's proposed bill from 2018 would have done this, in addition to providing resources to victims and training for law enforcement.

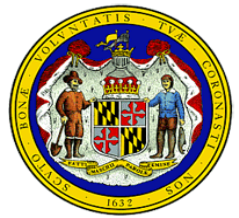
Protecting Civil Liberties and Constitutional Rights

Senator Hough invited Public Policy Director from the ACLU, Toni Holness, to speak on concerns from the viewpoint of criminal defendants. Ms. Holness opened by going over the constitutional definitions and applications of statutory vagueness and overbreadth. Statutory vagueness is the constitutional doctrine, arising out of the right to due process, which requires criminal statutes to specifically and concretely state what acts are prohibited in order to provide fair notice and ensure consistent application. Statutory overbreadth occurs when a statute designed to punish activities is so broad that it sweeps permissible activities into prohibition based on statutory design.

Ms. Holness explained how prior proposed statutes could be considered violations of the 1st Amendment based on overbreadth or vagueness. Ms. Holness went on to propose that any new statute should focus less on increasing penalties on those associated with gangs, and more on preventive solutions to keep individuals from feeling the need to join these associations. Ms. Holness also went on to propose that increased victim and witness relocation funding from the state would be a step in the right direction. Additionally, the task force should put forth recommendations that incentivize gang disengagement rather than increased penalties due to the disparate impact on minority communities.

Discussion

The roundtable discussion focused on the importance of the need for victim and witness relocation funding. Ms. Seigfried stated that this money would be helpful, but pushing for increased mandatory minimum sentences would create distrust in minority communities. Senator Hough mentioned that when the legislators crafted Justice Reinvestment in 2016, the committee tried to separate individuals into two groups; (1) people we were scared of and (2) people we were mad at. Most gang offenses fall under the former category. Senator Hough went on to state that the work group is sensitive to racial disparities and the majority of victims from MS-13



violence are Hispanic and gang violence tends to harm their own communities more than other groups.

Delegate Fisher stated that if the work group was to make recommendations for higher sentencing, the new legislation should treat college fraternities involved in sexual assaults similar to gang enterprises. Delegate Pippy stated that increasing victim and witness relocation funds will help take on the hierarchy of gang leadership. Mr. Smith suggested that the group look into diversion based programs for juveniles caught-up in gang association before they commit acts of violence.

Closing Remarks

Senator Hough thanked Mr. Smith, Ms. Leatherman, Ms. Clinton, and Ms. Holness for their presentations. Senator Hough also reminded the members to submit recommendations to him ten days before the next meeting in December. The meeting adjourned at 11:30 a.m.